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July 15, 2010

via ECF

The Honorable James Orenstein
United States Magistrate Judge
United States Federal Courthouse
225 Cadman Plaza East
Room 456 North
Brooklyn, NY 11201

**Re: In re Payment Card Interchange Fee and Merchant Discount Antitrust
Litigation – 05-MD-1720**

Dear Judge Orenstein:

Individual Plaintiffs respectfully write to object to the Supplement to Expert Report of Professor Kevin M. Murphy ("Murphy Supplement") dated June 24, 2010. The Murphy Supplement is untimely, a new report designed to repair failures or omissions in Professor Murphy's previous report in an effort to cure the fundamental errors in his analysis. The Individual Plaintiffs contend that Professor Murphy's Supplemental Report and the work contained therein is evidence of the inadmissibility of Professor Murphy's earlier opinions. The Individual Plaintiffs intend to take steps regarding the use of Professor Murphy's untimely supplement at an appropriate time. We have advised the Defendants of this intention by separate letter today.

By way of background, Plaintiffs timely served their expert reports on July 2, 2009, in accordance with the Court's Seventh Scheduling Order (Dkt. No. 1197).¹ Defendants served their expert reports, including the "Expert Report of Professor Kevin M. Murphy" ("Murphy Report") on December 14, 2009.² On February 12, 2010, Defendants served an errata sheet for the Murphy Report ("Murphy Errata"), which replaced Exhibit 5.6 and Appendix E.1 and E.2 with new versions. Plaintiffs deposed Professor Murphy on April 13 and 14, 2010, questioning him in detail about the Murphy Report and the Murphy Errata. According to Professor Murphy, the Murphy Errata revised

¹ Fact discovery in this matter closed on October 15, 2008. (See Dkt. No. 1133) (Sixth Scheduling Order).)

² The Seventh Scheduling Order set a November 1, 2009 deadline for Defendants' reply reports. The Court twice extended that deadline. (Dkt. Nos. 1308, 1315.)

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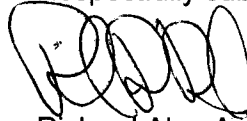
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his initial methodology by increasing the number of stores analyzed and number of shoppers analyzed in each store. (See Murphy Dep. 332-337). Plaintiffs timely served their reply expert reports on June 22, 2010. The operative scheduling order contemplated no further expert filings from Prof. Murphy.³ Nonetheless, on June 25, 2010, Defendants filed the Murphy Supplement. Prof. Murphy therein explains that his Supplement again corrects errors in Exhibit 5.6 and Appendix E to the Murphy Report and the Murphy Errata because the underlying data, which were purchased by the Defendants from a third party, were "not captured accurately." (Murphy Supp. ¶¶2).

As noted above, Individual Plaintiffs object to the Murphy Supplement and intend to take steps regarding the use of this untimely submission at an appropriate time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard Alan Arnold", written in a cursive style.

Richard Alan Arnold

RAA:ss

³ Plaintiffs filed a report by a new expert, Dr. Kirk Wolter, which analyzes the sample survey conducted by another Defendant Expert, Gregory Houston. The Tenth Scheduling Order provides Defendants with 60 days to reply to the Wolter report. As Dr. Wolter addresses none of the issues Professor Murphy raises in his Supplement, Defendants cannot avail themselves of this scheduling provision to justify the Murphy Supplement.